

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**DANIEL A. BERGER,**  
**Plaintiff,**

**CIVIL ACTION**

**v.**

**NO. 17-2295**

**HAHNEMANN UNIVERSITY HOSPITAL,  
TENET HEALTHSYSTEM  
HAHNEMANN, LLC, HAHNEMANN  
UNIVERSITY HOSPITAL BILLING  
DEPARTMENT, DREXEL MEDICINE,  
DREXEL UNIVERSITY COLLEGE OF  
MEDICINE, TPS OF PA, LLC, TPS IV OF  
PA, LLC, TENEANT HEALTHCARE  
CORPORATION, CONIFER HEALTH  
SOLUTIONS, LLC, PHILADELPHIA  
FIRE DEPARTMENT- EMS, MICHAEL  
GREENBERG, M.D., MICHAEL  
MCCOLLUM, D.O., NANCY A. MOHSEN,  
M.D., ROBERT KOENIGSBERG, D.O.,  
ALBERTO NUNEZ, M.D., EVAN  
HAWBAKER, M.D., ROY BURKET,  
BERNARD BAKER, JOHN DOE, AND  
ABC COMPANY,**

**Defendants.**

**ORDER**

**AND NOW**, this 17th day of November, 2017, upon consideration of the Motion to Dismiss by Defendants Hahnemann University Hospital and Tenet HealthSystem Hahnemann, LLC (“Hahnemann Defendants”) (ECF No. 7), the Plaintiff’s Response thereto and Cross-Motion to Sever (ECF No. 15), the Hahnemann Defendants’ Response to Plaintiff’s Cross-Motion to Sever (ECF No. 16), the Motion to Dismiss by Defendants Michael McCollum, Nancy A. Mohsen, Robert Koenigsberg, Alberto Nunez, and Evan Hawbaker (“Doctor Defendants”) (ECF No. 17), Plaintiff’s Response thereto (ECF No. 27), the Motion to Dismiss by Defendants Drexel Medicine, Drexel University (incorrectly identified as Drexel University College of

Medicine), and Michael Greenberg (“Drexel Defendants”) (ECF No. 21), Plaintiff’s response thereto (ECF No. 33), the Drexel Defendants’ Motion to Strike (ECF No. 30), the Hahnemann Defendants’ Motion to Strike (ECF No. 31), and Plaintiff’s response to both motions to strike (ECF No. 33), **IT IS HEREBY ORDERED** that:

(1) The Hahnemann Defendants motion (ECF No. 7) is **GRANTED**:

- (a) The motion to dismiss Count V (malpractice) is **GRANTED**. Count Five is **DISMISSED WITH PREJUDICE**.
- (b) The motion to dismiss Count VI (battery) is **GRANTED**. Count Six is **DISMISSED WITH PREJUDICE**.
- (c) The motion to dismiss Count VII (fraud) is **GRANTED**. Count Seven is **DISMISSED WITHOUT PREJUDICE** limited to the theory of charging for medically unnecessary tests.
- (d) The motion to dismiss Count VII (Intentional Infliction of Emotional Distress) is **GRANTED**. Plaintiff’s claim for Intentional Infliction of Emotional Distress is **GRANTED WITH PREJUDICE**.
- (e) The motion to dismiss Count VII (Negligent Infliction of Emotional Distress) is **GRANTED**. Plaintiff’s claim for Negligent Infliction of Emotional Distress is **DISMISSED WITHOUT PREJUDICE**.
- (f) The motion to dismiss Count VIII (FDCPA) is **GRANTED**. Count Eight is **DISMISSED WITH PREJUDICE**.
- (g) The motion to dismiss Count IX (FDCPA) is **GRANTED**. Count Nine is **DISMISSED WITH PREJUDICE**.
- (h) The motion to dismiss Count X (FDCPA) is **GRANTED**. Count Ten is **DISMISSED WITH PREJUDICE**.
- (i) The motion to dismiss Count XI (RICO) is **GRANTED**. Count Eleven is **DISMISSED WITHOUT PREJUDICE**.
- (j) The motion to dismiss Count XII (breach of contract) is **GRANTED**. Count Twelve is **DISMISSED WITHOUT PREJUDICE**.

(2) The Doctor Defendants motion (ECF No. 17) is **GRANTED**:

- (a) The motion to dismiss Count V (malpractice) is **GRANTED**. Count Five is **DISMISSED WITH PREJUDICE**.
- (b) The motion to dismiss Count VI (battery) is **GRANTED**. Count Six is **DISMISSED WITH PREJUDICE**.
- (c) The motion to dismiss Count VII (fraud) is **GRANTED**. Count Seven is **DISMISSED WITHOUT PREJUDICE** limited to the theory of charging for medically unnecessary tests.

- (d) The motion to dismiss Count VII (Intentional Infliction of Emotional Distress) is **GRANTED**. Plaintiff's claim for Intentional Infliction of Emotional Distress is **GRANTED WITH PREJUDICE**.
  - (e) The motion to dismiss Count VII (Negligent Infliction of Emotional Distress) is **GRANTED**. Plaintiff's claim for Negligent Infliction of Emotional Distress is **DISMISSED WITHOUT PREJUDICE**.
  - (f) The motion to dismiss Count VIII (FDCPA) is **GRANTED**. Count Eight is **DISMISSED WITH PREJUDICE**.
  - (g) The motion to dismiss Count IX (FDCPA) is **GRANTED**. Count Nine is **DISMISSED WITH PREJUDICE**.
  - (h) The motion to dismiss Count X (FDCPA) is **GRANTED**. Count Ten is **DISMISSED WITH PREJUDICE**.
  - (i) The motion to dismiss Count XI (RICO) is **GRANTED**. Count Eleven is **DISMISSED WITHOUT PREJUDICE**.
  - (j) The motion to dismiss Count XII (breach of contract) is **GRANTED**. Count Twelve is **DISMISSED WITHOUT PREJUDICE**.
- (3) The Drexel Defendants motion (ECF No. 21) is **GRANTED**:
- (a) The motion to dismiss Count V (malpractice) is **GRANTED**. Count Five is **DISMISSED WITH PREJUDICE**.
  - (b) The motion to dismiss Count VI (battery) is **GRANTED**. Count Six is **DISMISSED WITH PREJUDICE**.
  - (c) The motion to dismiss Count VII (fraud) is **GRANTED**. Count Seven is **DISMISSED WITHOUT PREJUDICE** limited to the theory of charging for medically unnecessary tests.
  - (d) The motion to dismiss Count VII (Intentional Infliction of Emotional Distress) is **GRANTED**. Plaintiff's claim for Intentional Infliction of Emotional Distress is **GRANTED WITH PREJUDICE**.
  - (e) The motion to dismiss Count VII (Negligent Infliction of Emotional Distress) is **GRANTED**. Plaintiff's claim for Negligent Infliction of Emotional Distress is **DISMISSED WITHOUT PREJUDICE**.
  - (f) The motion to dismiss Count VIII (FDCPA) is **GRANTED**. Count Eight is **DISMISSED WITH PREJUDICE**.
  - (g) The motion to dismiss Count IX (FDCPA) is **GRANTED**. Count Nine is **DISMISSED WITH PREJUDICE**.
  - (h) The motion to dismiss Count X (FDCPA) is **GRANTED**. Count Ten is **DISMISSED WITH PREJUDICE**.
  - (i) The motion to dismiss Count XI (RICO) is **GRANTED**. Count Eleven is **DISMISSED WITHOUT PREJUDICE**.

- (j) The motion to dismiss Count XII (breach of contract) is **GRANTED**. Count Twelve is **DISMISSED WITHOUT PREJUDICE**.
- (4) The Drexel Defendants' Motion to Strike Plaintiff's Certificate of Merit (ECF No. 30) is **GRANTED**. Plaintiff's Certificate of Merit is **STRICKEN**.
- (5) The Hahnemann Defendants' and Doctor Defendants' Motion to Strike Plaintiff's Certificate of Merit (ECF No. 31) is **GRANTED**. Plaintiff's Certificate of Merit is **STRICKEN**.
- (6) Plaintiff's Motion to Sever (ECF No. 15) is **DENIED**.
- (7) Plaintiff shall have leave to file an amended complaint. And such amended complaint must be filed no later than **December 18, 2017**.

**BY THE COURT:**

**/s/Wendy Beetlestone, J.**

---

**WENDY BEETLESTONE, J.**

Date: 11/17/2017